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Before the
FEDERAL COMMUNICATIONS COMMISSION FCC 93-327
Washington, D.C. 20554

FCC MAIL-SECTION

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In the Matter of

Revisions to Price
Cap Rules for AT&T

CC Docket No. 93-197 BY

NOTICE OF PROPOSED RULEMAKING

Adopted: June 24, 1993

; Released: July 23, 1993

Comment Date: September 21, 1993

Reply Date: October 21, 1993

By the Commission: Commissioner Barrett issuing a statement.

I. INTRODUCTION

1. As the Report on AT&T's performance under price cap regulation adopted today indicates, the AT&T price cap plan has worked well, combining reasonable rates and modest regulatory requirements with strong incentives for productivity growth and innovation. As the Report also discusses, however, certain relatively minor modifications and improvements to the plan may be warranted. In this proceeding we request the submission of additional data and comment on four possible revisions to the AT&T price cap plan. These are: 1) moving Optional Calling Plans (OCPs) such as ReachOut out of AT&T's Basket 1; 2) moving commercial service out of Basket 1; 3) clarifying or revising the monitoring and reporting of AT&T service quality and network reliability, including its Equipment Blockage and Failure (EB&F) report; and 4) revising the price cap treatment of the 800 Directory Assistance (800 DA) service remaining in Basket 2 and the analog private line services remaining in Basket 3.

II. ISSUES FOR COMMENT

A. Optional Calling Plans (OCPs)

2. In the AT&T Price Cap Performance Review Notice of Inquiry (NOI),¹ we suggested that one category of Basket 1 services, optional calling plans (OCPs), might be removed from price caps.² OCPs such as AT&T's ReachOut services offer long distance rate discounts or block-of-time rates in exchange for the customer's committing, for example, to payment of a fixed monthly charges or to minimum service periods. These services are optional in the sense that customers may choose to enroll in such plans in lieu of traditional basic

¹ Price Cap Performance Review for AT&T, CC Docket No. 92-134, Notice of Inquiry, 7 FCC Rod 5322 (1992).

² NOI, 7 FCC Rod at 5326, n. 26.

schedule per-call rates. These optional plans are typically designed to attract relatively frequent callers, those for whom the discounts and other benefits reduce bills more than the monthly charge or other commitments increase them. In its comments, AT&T agrees that its OCPs are subject to effective competition, pointing out that "MCI, Sprint, and other interexchange carriers have introduced a plethora of OCPs and other offerings designed for and marketed to residential customers."³ MCI states that if price caps are retained, it might make sense to remove ReachOut from Basket 1.⁴

3. The vigorous competition in optional calling plans is also indicated by the actual rates AT&T has chosen to set. Under price caps, AT&T has consistently priced this category of services substantially below the cap.⁵ As of July 1, 1992, for example, the Basket 1 PCI was at 94.4, while the OCPs such as ReachOut America were set more than 7 points lower, at 86.9. In pending filings scheduled to become effective July 1, 1993, AT&T calculates that the Basket 1 PCI will rise slightly to 94.7, but proposes ReachOut rates almost 12 points lower, at 82.9. Chart 1. This pattern of pricing ReachOut below the price cap maximum indicates that these services are subject to more competitive price pressure than other Basket 1 services. Thus, moving these services from price caps to streamlined regulation is not likely to affect the actual rates charged for OCPs. Moreover, removal of these services could bring other significant benefits. To the extent that ReachOut services have had larger rate reductions than the standard long distance schedules for which they are substitutes, removal of ReachOut from the basket might help target productivity gains to customers for the standard service. At the same time, removal of ReachOut from price caps would give AT&T more flexibility to compete for optional calling plan services. Customers for these services should also benefit from lower restraints on AT&T's ability to compete for their traffic. Because the current rates for their optional plans already appear to be determined by market forces, not the price cap limits, customers are unlikely to be harmed by streamlined regulation, and they will also retain the opportunity to choose between the standard per-call service or the optional calling plans of AT&T and other carriers.

4. We accordingly believe there is substantial reason to consider moving OCPs from Basket 1 and to streamlined regulation, as we have already done for the services subject to effective competition in Baskets 2 and 3. Commenters may wish to address whether OCPs should be streamlined or made subject to some other regulatory approach, such as a separate basket. The remaining Basket 1 services would be the basic long distance service, MIS, including direct-dial and operator assisted interstate and international calls. The services that might be removed from Basket 1 include services such as ReachOut America, ReachOut World, the Any Saver Plan, and the Small Business Option. Their removal could be accomplished by reinitializing the Basket 1 Actual Price Indexes (APIs) for the remaining Basket 1 services at 100, for example, as of

³ AT&T Comments at 15.

⁴ MCI Comments at 9.

⁵ See Public Notice, Chart 1, 7 FCC Rod 6084, 6086 (1992).

today's date. Alternatively, we might maintain the existing APIs and adjust the PCI. In general, we request comment on whether the treatment of OCPs under the AT&T price cap plan should be changed, and if so in what manner.

B. Commercial Customers and Services

5. AT&T proposes in its separate waiver petition that we permanently waive the price cap rules for what it describes as Commercial Long Distance Services. This term, as defined by AT&T, would include "Dial Station calls originated on a line for which the subscriber pays a rate that is described as a business or commercial rate in the applicable local exchange service tariff for switched services."⁶ Under its proposal, AT&T would apparently establish at least two different sets of rates, terms and conditions for ordinary long distance calls based upon how the local exchange carrier classifies the customer's local service. Residential customers would apparently be barred from subscribing to the commercial services.⁷

6. AT&T's petition does not indicate the changes it would make in tariffs governing either its residential or its commercial services, but states that the waiver would apply to 12 percent of Basket 1 revenues. It argues that grant of the waiver would largely complete the streamlining of outbound commercial services and permit AT&T to respond more quickly and efficiently to the demands of its commercial customers. It also contends that the same factors that led the Commission to streamline regulation of most Basket 2 and 3 services in the Interexchange Proceeding apply with equal force to the Basket 1 services it provides to commercial customers, i.e., vigorous competition from alternative carriers who possess ample transmission capacity, and market share that has declined from 54 percent in 1987 to 39 percent in 1991. AT&T also contends that commercial customers are keenly aware of competitive alternatives, as shown by the annual churn of customer changes between AT&T and its competitors, about 13 percent in 1991.⁸

7. In addition to arguing that AT&T's petition represents an improper and unnecessary attempt to circumvent the performance review and fails to meet the legal burden for grant of a waiver,⁹ the oppositions contend that there has been no significant change in the small business market since the Interexchange Proceeding decision in August, 1991 that would justify approving AT&T's waiver request.¹⁰ In their view, AT&T remains the dominant provider of Basket 1

⁶ AT&T Waiver Petition at 2, quoting AT&T Tariff F.C.C. No. 1, Section 6.20.

⁷ AT&T says that "Commercial Long Distance Services are not currently defined to include optional calling plan services." Petition at 2, fn. 4.

⁸ AT&T Petition at 13-14.

⁹ Opposition of ComTel at 5; Comments of IDOMA; Opposition of MCI at 5; Comments of PacBell; Comments of Sprint at 2.

¹⁰ Comments of LCI International at 4; Comments of Sprint at 2.

services, with substantial ability to control prices in the market. In addition, CompTel contends that AT&T's data are skewed because they exclude resellers of AT&T's services from AT&T's market share and that AT&T does not address other critical information, such as disparities in correspondent agreements and international accounting rates.¹¹ IDOMA contends that price cap regulation does not impose significant burdens on AT&T's ability to compete, because most of the Basket 1 pricing restraints concern upward price changes, not downward changes in response to competitive pressure.¹²

8. MCI believes that AT&T's petition represents an attempt to obtain the ability to impose monthly minimum usage charges on some of its long distance customers without jeopardizing its optional calling plans. In MCI's view, this imposes the burden on AT&T to show whether some users of a "like" service should be subject to such a charge, while others escape it, and requires that we consider the rationale underlying our earlier decision to allow optional calling plans.¹³ It also contends that the waiver would exacerbate discrimination AT&T has already imposed by separating commercial and residential MTS, services MCI views as indisputably "like" services under Section 202(a) of the Communications Act.¹⁴

9. AT&T's proposed permanent waiver of the price cap rules would in fact substantially modify the price cap plan. On the one hand is AT&T's proposal to adopt streamlined regulation of commercial service. It appears plausible that the level of competition for the Basket 1 long distance traffic of business customers may be substantial, and more vigorous than that for other Basket 1 customers. Price cap regulation may also inhibit that competition more than streamlined regulation would. AT&T's data on market share, competitive alternatives, and churn provide some support for this conclusion. Strong competition may effectively prevent unreasonable prices for commercial customers. The flexibility to target offerings to these separate groups of customers, who are also offered services by other carriers, may also permit more attractive offerings and pricing for all customers.

10. Commenters, however, challenge AT&T's market data. It is not clear whether any of the adjustments to market share CompTel asserts¹⁵ should be made would cause us to find that AT&T's market share is larger than it concedes. AT&T appears to exclude optional calling plans from its market share calculations, though some of these are expressly designed for business customers and others are probably used by them. AT&T also provides no data on any cost difference between the two groups of customers and does not explain the justification for using the local exchange carrier's definition of business customers as the basis for establishing different sets of long distance

¹¹ CompTel Opposition at 10-11.

¹² Comments of IDOMA at 2.

¹³ See Guidelines for Dominant Carriers' MTS Rates and Rate Structure Plans, 59 RR 2d 70, 88-89 (1985).

¹⁴ Comments of MCI at 5-7.

services.

11. In addition, AT&T's proposal would permit it to target new and restructured services only to business customers. For example, if AT&T introduced a service specially adapted to calls linking personal computers, it might restrict the service to business customers, and prohibit its use to residential customers. Alternatively, AT&T might set different rates, terms, and conditions for home and business customers. Moreover, AT&T's proposed classification does not make clear whether it would bar resale of services designated as commercial to residential customers.

12. AT&T's petition therefore raises significant issues concerning restrictions on use and resale, restrictions which have long been prohibited.¹⁵ Customers have the right to use common carrier telecommunications services in any way that is privately beneficial, so long as it is not publicly harmful.¹⁶ For twenty-five years, this Commission has stated that restrictions on the right to resell can segment markets and sustain price discrimination, while barring economically efficient uses of the network. Although classifications such as commercial can be permitted under the Communications Act,¹⁷ it is not clear whether AT&T's planned application of the classification, which includes separate rates, terms, and conditions, as well as significantly different forms of regulation for services subject to the restrictions, is reasonable. Moreover, it is not clear from AT&T's petition or comments what the effects of permitting full implementation of the classifications and concomitant streamlining would be to commercial or residential customers.¹⁸

¹⁵ Regulatory Policies Concerning Resale and Shared Use of Common Carrier Services and Facilities, 60 F.C.C. 2d 261 (1976), mod'd on recon. 62 F.C.C. 2d 588 (1977), aff'd, AT&T v. FCC, 572 F.2d 17 (2d Cir.), cert. denied, 439 U.S. 875 (1978); Regulatory Policies Concerning Resale and Shared Use of Common Carrier Domestic Public Switched Network Services, 83 FCC 2d 167, 175-76 (1980).

¹⁶ Carterfone, 13 FCC 2d 420 (1968), recon. denied 14 FCC 2d 571 (1969). See also Hush-a-Phone v. U.S., 238 F.2d 266 (D.C. Cir. 1956).

¹⁷ See Section 201(b) of the Communications Act, 47 U.S.C. Section 201(b): "All charges, practices, classifications and regulations for and in connection with such communications service, shall be just and reasonable, and any such charge practice, classification, or regulation that is unjust or unreasonable is hereby declared to be unlawful: Provided, That communications by wire or radio subject to this Act may be classified into day, night, repeated, unrepeated, letter, commercial [emphasis added], press, Government and such other classes as the Commission may decide to be just and reasonable, and different charges may be made for the different classes of communications...."

¹⁸ To date, the effects of AT&T's residential/commercial classification have included: restriction of certain promotional discount offerings either to commercial customers (see e.g., AT&T Trans. No. 5004, filed April 6, 1993) or residential customers (AT&T Trans. No. 5328, filed April 16, 1993); elimination of night/weekend rates and revisions to mileage bands for commercial

13. In sum, we believe that a more complete record should be developed before a decision is made either to grant or to deny AT&T's request to streamline commercial service. Moreover, other options may also warrant consideration. For example, in the event that full streamlining is not justified, an alternative might be to place commercial services in a separate basket. Under this approach, if the competition for commercial services is more intense than for residential, but still not completely effective in assuring reasonable prices, a separate basket might deter cross-subsidization, and still give AT&T substantial flexibility to change commercial rates, terms, and conditions. We request further evidence and comments on these issues.

C. Monitoring of Service Quality and Network Reliability

14. Two problems related to our monitoring of AT&T's service quality have arisen since we issued the AT&T Price Cap Performance Review Notice of Inquiry. In the EB&F reports AT&T has filed under price cap regulation, it used the levels of blockage experienced on AT&T's network and the level of blockage from all causes during the six months before price cap regulations began to initialize the indexes measuring subsequent blockages at 100. Higher levels of blockage than the pre-price cap baseline would result in EB&F reports above 100, while below-baseline levels would produce reports below 100. Recently, AT&T informed Commission staff that it discovered a computer programming error in the pre-price cap baseline data used to set the index, and that because of this error data for three months of the period have been incorrect and cannot now be reconstructed.¹⁹ AT&T recomputed the index using data from the last three months of the pre-price cap period, which AT&T asserts is correct. Under the index data as revised, AT&T's EB&F scores under price caps improve. See Report Charts 6 (A-D).

15. In addition, AT&T states that it began using a new method of computing EB&F in January, 1993 that excludes Canada and parts of the Caribbean from its calculations. According to AT&T, these changes make comparisons with earlier periods obsolete. AT&T proposes to establish an updated base period using the January-June, 1993 results for future reports.

16. These corrections and revisions in the AT&T EB&F Indexes are a matter of concern because they have the potential to make the Indexes less effective as a tool to monitor AT&T's service quality and network reliability, in particular the extent to which its performance has improved or declined under price cap regulation. The goal of price cap regulation is to provide incentives for increased efficiency. Reductions in price alone do not, however, demonstrate increased efficiency unless quality is maintained or improved. The EB&F Indexes are intended to provide data to assess and identify changes in

customers (AT&T Trans. No. 4872, filed March 3, 1993); and introduction of a discount plan limited to residential customers (AT&T Trans. No. 4871, filed March 3, 1993).

¹⁹ Letter from P.J. Aduskevicz, AT&T District Manager, Federal Government Affairs to Peyton Wynns, FCC, Dated January 26, 1993.

service quality under price cap regulation.

17. The revised data appear to show that AT&T performance was appreciably better than indicated by the data originally reported. Report Charts 6 (A-D). AT&T also claims that its revisions to the index data make it impossible to compare current performance with either the period before price cap regulation or the first three and a half years of price caps. As an initial matter, to clarify the corrections to the indexes it asserts are necessary, we request that AT&T commission and submit an independent audit of all EB&F data, including the initial pre-price cap data and all subsequent data. AT&T is directed to submit the audit report, and the audited EB&F data series as part of its initial comments in this rulemaking. We also request that AT&T provide a full explanation of the reasons for all changes in EB&F methodology and coverage from the initial EB&F report to date. We also request comment on whether our service quality and network reliability monitoring requirements should be revised or clarified to better assure they serve their intended purpose. In particular, we ask whether we should require AT&T to report EB&F on a basis consistent with the pre-1993 reports, or should adopt additional or different reporting requirements.

D. Regulatory Treatment of Remaining Basket 2 and 3 Services

18. In the Interexchange Proceeding, in recognition of the state of competition in the services provided in the interexchange marketplace, we removed most Basket 2 and 3 services from price cap regulation. The only remaining Basket 2 service is 800 Directory Assistance, which remains an AT&T monopoly. The only remaining Basket 3 services are analog private line services, services that are being replaced by digital services. These are both relatively small services in relation to AT&T's total interstate operations or even to the former Baskets 2 and 3. Application of the usual price cap index calculations may thus present different issues for these services, especially for 800 DA. For example, the price cap productivity factor is based on historical productivity growth for all interstate services. This factor may not necessarily be appropriate for a single small service such as 800 DA. Accordingly, we request comment on whether we should revise the price cap formula, baskets, or service bands to accommodate these changes in the compositions of Basket 2 and 3. One possibility, for example, might be to fold Baskets 2 and 3 together, with a separate service band for 800 DA. Basket 2 might also be combined with Basket 1. We request suggestions and comments on these and other possible approaches, consistent with the goals of the AT&T price cap plan.

III. PROCEDURAL MATTERS

19. Regulatory Flexibility Act. We certify that the Regulatory Flexibility Act of 1980 does not apply to this rule making proceeding because if rule amendments are promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act. The rules at issue in this rulemaking apply only to AT&T Communications, a large corporation. The incidental effects on the interstate long distance rates and services AT&T provides to small business entities is not likely to be significant. The

secretary shall send a copy of this Notice of Proposed Rule Making, including the certification, to the chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. Section 601 et seq (1981).

20. Comment Dates. Pursuant to applicable procedures set forth in Section 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. Section 1.415 and 1.419, interested parties may file comments on or before September 21, 1993 and reply comments on or before October 21, 1993. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you should file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission 1919 M Street, N.W., Washington, D.C. 20554.

21. Ex Parte Rules - Non-restricted Proceeding. This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission Rules. See generally 47 C.F.R. Section 1.1202, 1.1203, and 1.1206(a).

22. IT IS ORDERED that AT&T shall commission and cooperate fully with a comprehensive audit of all data relating to its Equipment Blockage and Failure Indexes from its inception in 1969 to the present. The audit report shall specify the correct Index data and evaluate the reasons for any revisions to the data by AT&T, including the revisions described in this Notice, and AT&T's explanations for such revisions. The auditor shall also evaluate the basis for any changes in the method used for computing the Indexes, or any other changes AT&T has made or proposes to make that might affect the consistency and comparability of Index data from the initiation of the Index to the present. An original and four copies of the audit report shall be filed as part of AT&T's comments in this docket.

For further information on this proceeding, contact Dan Grosh, Tariff Division, (202) 632-6387.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
William F. Caton
Acting Secretary

June 24, 1993

**SEPARATE STATEMENT
OF
COMMISSIONER ANDREW C. BARRETT**

In Re: The Matter of Price Cap Rules for AT&T

The maintenance of excellent service quality by AT&T under price caps is of paramount importance. The increased efficiency and lower cost structures price caps motivate cannot be achieved at the expense of reduced service quality and reliability. My strong endorsement of price cap regulation for AT&T has been predicated on the belief that market forces, "backstopped" by selective Commission action where appropriate, combine to ensure the desired level of service quality and reliability.

As a threshold matter, the Commission must have the ability to effectively monitor AT&T's service quality performance under price caps in order to evaluate that performance, particularly in comparison to pre-price cap experience. I am concerned with any action or failure to act by AT&T that may potentially impede that ability. Thus, I wholly support the requirements in this Notice of Proposed Rulemaking that AT&T commission an independent audit of all equipment blockage and failure (EB&F) reporting data and that AT&T provide full explanation for any changes in methodology used to compute EB&F indexes. More generally, I will welcome parties' comments on whether the Commission's service quality monitoring requirements for AT&T would benefit from revision or clarification.